

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GWENDOLYN WHITEHEAD,

Plaintiff,

- against -

MIX UNIT, LLC

Defendant.

Docket No. 1:17-cv-9476

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Gwendolyn Whitehead (“Whitehead” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant Mix Unit, LLC (“Mix Unit” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted design, owned and registered by Whitehead, a professional artist. Accordingly, Whitehead seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Whitehead is a professional artist having a usual place of business at 2753 Clover Road, NW, Concord, North Carolina, 28027.

6. Upon information and belief, Mix Unit is a limited liability company duly organized and existing under the laws of the State of Connecticut, with a place of business at 241 Ledyard Street, Unit B-15, Hartford, CT 06114. At all times material, hereto, Mix Unit has owned and operated a website at the URL: www.MixUnit.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Design

7. Whitehead created a design “Bed-Stuy Do or Die” (the “Design”). A true and correct copy of the Design is attached hereto as Exhibit A.

8. Whitehead is the author of the Design and has at all times been the sole owner of all right, title and interest in and to the Design, including the copyright thereto.

10. The Design was registered with the United States Copyright Office and was given registration number VAu 149-782.

B. Defendant’s Infringing Activities

11. Upon information and belief, Mix Unit copied the Design and placed it on T-Shirts. See <https://www.mixunit.com/p/103004-bedstuy-do-or-die-radio-raheem-mens-t-shirt/>. A true and correct copy of T-Shirts selling on the Website is attached hereto in Exhibit B.

12. The T-Shirts with the Design are selling for \$29.98.

13. Mix Unit did not license the Design from Plaintiff, nor did Mix Unit have Plaintiff’s permission or consent to use the Design on its T-Shirts.

CLAIM FOR RELIEF **(COPYRIGHT INFRINGEMENT AGAINST MIX UNIT)**

(17 U.S.C. §§ 106, 501)

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-13 above.

15. Mix Unit infringed Plaintiff's copyright in the Design by reproducing and publicly displaying the Design on its T-Shirts. Mix Unit is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Design.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the foregoing acts of infringement by Mix Unit have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

18. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

19. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Design, pursuant to 17 U.S.C. § 504(c).

20. Plaintiff further is entitled to her attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Mix Unit be adjudged to have infringed upon Plaintiff's copyrights in the Design in violation of 17 U.S.C §§ 106 and 501;

2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Design; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded her costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
December 4, 2017

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